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Opinion No. 07-116

Provision of Medical Services By a Certified Nurse Practitioner, Registered Nurse, Advanced Practice Nurse, Licensed Practical Nurse or Physician Assistant

QUESTIONS

1. Considering the provisions of Tenn. Code Ann. §§ 63-6-204(b), 68-11-205(a), or any other law of this state, is it lawful for a certified nurse practitioner, registered nurse, advanced practice nurse, licensed practical nurse or physician assistant to own and operate a professional practice wherein medical services are provided?

2. Considering the provisions of Tenn. Code Ann. § 63-6-204(c) or any other law of this state, is it lawful for a physician to be an employee of, or an independent contractor to, a certified nurse practitioner, registered nurse, advanced practice nurse, licensed practical nurse or physician assistant for the sole purpose of providing the supervision, responsibility and control required by Tenn. Code Ann. § 63-6-204(b) for medical services being provided by those licensed allied health care providers at their practice sites? For purposes of this question, we assume that the physician, if he or she actively practices clinical medicine at all, does so primarily (if not exclusively) at some office or location other than at the referenced practice sites.

OPINIONS

1. It is not lawful for a certified nurse practitioner, registered nurse, advanced practice nurse, licensed practical nurse or physician assistant to own and operate a professional corporation or professional limited liability company ("PLLC") for the provision of medical services.[1] However, it is lawful for a physician assistant to form and own shares in a Medical Professional Corporation, but only in combination with licensed physician(s) or licensed osteopathic physician(s), except radiologists, pathologists, and anesthesiologists, under Tenn. Code Ann. § 48-101-610(d)(4), and/or in combination with physician entities as described in Tenn. Comp. R. & Regs. 0880-2-.20(1)(b). Further, it is lawful for a physician assistant to be a member of, or holder of financial rights in, a Medical Professional Limited Liability Company, but only in combination with licensed physician(s) or licensed osteopathic physician(s), except radiologists, pathologists and

[1]We use the term "provision of medical services" in light of the definition of "professional service" contained in Tenn. Code Ann. § 48-249-1102(6): "a service that may be lawfully rendered only by a person licensed or otherwise authorized by a licensing authority in this state to render the service," as well as the similar definition of that term in Tenn. Code Ann. § 48-101-603(7), which adds: ". . . . and that may not be lawfully rendered by a corporation under the Tennessee Business Corporation Act, compiled in chapters 11-27 of this title."

anesthesiologists, under Tenn. Code Ann. § 48-249-1109(e)(1)(D), and/or in combination with physician entities as described in Tenn. Comp. R. & Regs. 0880-2-.20(2)(b). Otherwise, insofar as our research has revealed no specific statutory prohibition against it, we anticipate that there could be certain circumstances in which a nurse practitioner, advanced practice nurse or physician assistant legitimately might own and operate a practice wherein medical services are provided, so long as such services are provided under the "supervision, control and responsibility" of a licensed physician, as is required by Tenn. Code Ann. § 63-6-204(b).[2]

2. It is not lawful for a physician to be an employee of a certified nurse practitioner, registered nurse, advanced practice nurse, licensed practical nurse or physician assistant for the sole purpose of providing the supervision, responsibility and control required by Tenn. Code Ann. § 63-6-204(b) for medical services provided by such a licensed allied health care provider. However, a physician in active clinical practice lawfully may enter into an independent contractor arrangement with a certified nurse practitioner, advanced practice nurse or physician assistant for the sole purpose of providing the supervision, responsibility and control required by Tenn. Code Ann. § 63-6-204(b), and other applicable statutes or rules, for the provision of medical services by such licensed allied health care provider at a remote practice site. Nevertheless, a licensed physician may not contract independently with a licensed practical nurse or registered nurse (who is not, in addition, a certified nurse practitioner or advanced practice nurse) for such purpose.

ANALYSIS

1. Tenn. Code Ann. § 63-6-204 defines the "practice of medicine" broadly. Tenn. Code Ann. § 63-6-204(a)(1) provides that "[a]ny person shall be regarded as practicing medicine, within the meaning of this chapter, who treats, or professes to diagnose, treat, operates on or prescribes for any physical ailment or any physical injury to or deformity of another." However, the statute includes certain exceptions to this broad definition of the "practice of medicine." Among these exceptions is Tenn. Code Ann. § 63-6-204(b), which provides, in pertinent part, that "[n]othing in this chapter shall be so construed as to prohibit service rendered by a physician assistant, registered nurse or a licensed practical nurse *if such service is rendered under the supervision, control and responsibility of a licensed physician*"(emphasis added).

In turn, Tenn. Code Ann. § 68-11-205 addresses the unauthorized practice of medicine. However, that section also contains a number of exceptions.[3] Yet, none of these exceptions permits

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[2]Tenn. Code Ann. § 63-9-113, regarding supervised osteopathic medical service by a physician assistant, registered nurse or licensed practical nurse, contains substantially similar language.

[3]For example, a licensed physician or group of licensed physicians, including, but not limited to, a Medical Professional Corporation, is not prohibited from employing physicians. Tenn. Code Ann. § 68-11-205(b)(4). Further, a licensed hospital or an affiliate of a hospital may employ licensed physicians (other than radiologists, anesthesiologists, pathologists or emergency physicians) subject to certain conditions that are set out in that section. One such condition is that employing entities "shall not restrict or interfere with medically appropriate diagnostic or treatment decisions." Tenn. Code Ann. § 68-11-205(b)(1)(A). Tenn. Code Ann. §§ 63-6-204 (c), (d), and (e) repeat this statutory mandate against restricting a physician from exercising independent medical judgment in diagnosing and treating patients, but

a certified nurse practitioner, registered nurse, advanced practice nurse, licensed practical nurse or physician assistant[4] to engage in the practice of medicine, as defined by law. None of the foregoing legally may provide medical services except under the supervision, control and responsibility of a licensed physician. Tenn. Code Ann. § 63-6-204(b).

The legal principle that undergirds both Tenn. Code Ann. §§ 68-11-205 and 63-6-204 is a common law legal doctrine known as the "corporate practice of medicine" doctrine. The Tennessee Supreme Court invoked the principles of this doctrine in *State ex rel. Loser v. National Optical Stores Co.*, 189 Tenn. 433, 225 S.W.2d 263 (Tenn. 1949), when it held that the "rule is uniform that a corporation cannot practice one of the learned professions."[5] Relying on decisions from other jurisdictions that reached a similar result, the court in *Loser* reasoned that if that course were sanctioned, the logical result would be that corporations and business partnerships "might practice law, medicine, dentistry or any other profession by the simple expedient of employing licensed agents," and that if this were permitted, "professional standards would be practically destroyed, and professions requiring special training would be commercialized, to the public detriment." The court in *Loser* pointed out further that the "ethics of any profession is based upon personal or individual responsibility," and that one who practices a profession "is responsible directly to his patient or his client," and hence "he cannot properly act in the practice of his vocation as an agent of a corporation or business partnership whose interests in the very nature of the case are commercial in character." *Id.* at 445, 446 (citations omitted).

There are, however, a number of specific exceptions to the "corporate practice of medicine" doctrine, some of which we have examined above. For example, both Tenn. Code Ann. §§ 48-101-610(d) and 48-249-1109(e) provide that certain specified combinations of health care professionals have a right to own stock in, or be members or holders of financial rights in, the same professional

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also provide certain exceptions from the general rule prohibiting physician employment. In addition, Tenn. Code Ann. § 63-6-204 (f) provides that hospitals and affiliates of hospitals may, subject to specific statutory conditions (including a condition that employing entities shall not restrict or interfere with medically appropriate diagnostic or treatment decisions), employ certain categories of physicians, while Tenn. Code Ann. § 63-6-204(f)(4) recites additional specific instances wherein physicians legitimately may be employed.

[4]A "physician assistant" is an individual who renders diagnostic or therapeutic services that constitute the practice of medicine and that, but for the provisions of Tenn. Code Ann. §§ 63-6-204 and 63-9-113, could only be performed by a licensed physician. Tenn. Code Ann. § 63-19-102(5). A "certified nurse practitioner" is a registered nurse who is certified by the Board of Nursing pursuant to Tenn. Code Ann. §§ 63-7-123 and 63-7-207(14), and who has been issued a certificate of fitness by the Board of Nursing. Tenn. Comp. R. & Regs. 0880-6-.01(1). An "advanced practice nurse" is a registered nurse with a master's degree or higher in a nursing specialty and national specialty certification as a nurse practitioner, nurse anesthetist, nurse midwife, or clinical nurse specialist. Tenn. Code Ann. § 63-7-126(a). For the sake of simplicity, in this opinion we refer to the above categories, along with registered nurses and licensed practical nurses, as "licensed allied health care providers." In doing so, we intend that this term be distinguished from the similar term,"allied health professional," as is defined in 42 U.S.C. § 295p(5) and used elsewhere in the Tennessee Code, which excludes registered nurses and physician assistants.

[5]Traditionally, the common-law prohibition against corporate practice of the professions is limited to the "learned" professions, such as law, medicine and theology. *See, e.g., Georgia State Board of Examiners in Optometry v. Friedmans' Jewelers,* 183 Ga. 669, 189 S.E. 238, 241 (1936).

corporation or PLLC. The legislature has determined that the services rendered by these health care professionals are "related and complementary to each other." Tenn. Code Ann. §§ 48-101-610(d)(4) and 48-249-1109(e)(2). However, nothing contained either in Tenn. Code Ann. §§ 48-101-601, *et seq*., or in Tenn. Code Ann. §§ 48-249-1101, *et seq*.,[6] would permit any alteration of the lawful scope of practice of a professional forming such a professional corporation, or who is a member or holder of financial rights in a PLLC. Further, neither statute would allow such professional to conduct his or her practice in a manner that is contrary to the standards of ethics applicable to the professional's profession. Tenn. Code Ann. §§ 48-101-610(d)(4) and 48-249-1109(e)(2).

The latter sections include four permissible combinations of specified health care professionals. Included among these is the combination of licensed physician assistants and licensed physicians (except radiologists, pathologists, and anesthesiologists). Tenn. Code Ann. §§ 48-101-610(d) and 48-249-1109(e). However, these combinations do not include licensed practical nurses or registered nurses, nor, by extension, do they include certified nurse practitioners or advanced practice nurses.

It has been suggested that, because the pertinent statutes do not specifically prohibit physician assistants (or other licensed allied health care providers) from owning and operating a professional corporation or a PLLC for the provision of medical services,[7] such ownership of a medical practice by non-physicians somehow is legally permissible. We can find no support for this proposition. First, there is no statutory provision that would exempt such licensed allied health care providers from the "corporate practice of medicine" doctrine. No statute countenances such ownership by non-physicians of a professional practice that includes the provision of medical services. With the exception of physician assistants who may own such a professional practice in which the practice of medicine is conducted in an MPC or MPLLC, but only in combination with licensed physicians or in the combinations permitted by Tenn. Comp. R. & Regs. 0880-2-.20, we can find no exception to the corporate practice of medicine doctrine with respect to such ownership of a medical practice by licensed allied health care providers. Thus, this issue falls squarely under the aegis of the rule of statutory construction, *inclusio unius est exclusio alterius*, meaning that the inclusion of the one excludes all others.

Second, both Tenn. Code Ann. §§ 48-101-610(a)(2) and 48-249-1109(b), respectively, impose certain limitations on ownership and eligibility. The former section prohibits a professional

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[6]That part is contained in the chapter known as the "Tennessee Revised Limited Liability Company Act," Tenn. Code Ann. §§ 48-249-101, *et seq*. In addition, Tenn. Code Ann. §§ 48-248-101, *et seq*., also concerns PLLCs.

[7]The rules of the Board of Medical Examiners refer to such ownership structures as Medical Professional Corporations ("MPC") and Medical Professional Limited Liability Companies ("MPLLC"), respectively. Tenn. Comp. R. & Regs. 0880-2-.20. Included in such rule are additional permissible combinations, including: a foreign or domestic general partnership, MPC or MPLLC in which all partners, shareholders, members or holders of financial rights are either physicians licensed in Tennessee or by other states, or composed of entities that are directly or indirectly owned by such licensed physicians; and/or the professionals authorized by Tenn. Code Ann. §§ 48-101-610, *et seq*. or 48-249-1101, *et seq.*; and/or a combination of the above professionals. Tenn. Comp. R. & Regs. 0880-2-.20(1)(b), (2)(b).

corporation from issuing shares for sale to persons who are not licensed to practice such profession in Tennessee, unless the licensing authority that licenses the professionals forming such corporations specifically authorizes the issuance of such shares. The latter section prohibits a PLLC from having persons who are not licensed to practice a profession described in the PLLC's articles in this state as members or holders of financial rights, unless the licensing authority that licenses the professionals who are members or holders of such a PLLC specifically so authorizes.[8] *Id*. Further, with certain enumerated exceptions, a PLLC may be formed, and professional LLC status of an LLC may be elected, solely for the purpose of rendering professional services, including services ancillary to them, and solely within a single profession; or, for the purpose of rendering professional services within two (2) or more professions, and for the purpose of engaging in any lawful business authorized by Chapter 249, only if the combination of professional purposes or of professional and business purposes is "specifically authorized by the licensing law of this state applicable to each profession in the combination." Tenn. Code Ann. § 48-249-1104(b), (c). Yet, nothing in the rules of the Tennessee Board of Medical Examiners regarding Medical Professional Corporations and Medical Professional Limited Liability Companies specifically authorizes a licensed nurse or other licensed allied health care provider to form and own stock in an MPC doing business in Tennessee, or to be a member of or holder of financial rights in an MPLLC doing business in Tennessee, nor do such rules authorize physician assistants to do so, other than in combination with licensed physician(s) or physician entities. Tenn. Comp. R. & Regs. 0880-2-.20(1)(b), (2)(b).

Based on the above analysis, it is the opinion of this office that it is not lawful for a certified nurse practitioner, registered nurse, advanced practice nurse, licensed practical nurse or physician assistant to own and operate a professional corporation or PLLC for the provision of medical services. However, it is lawful for a physician assistant to form and own shares in an MPC, but only in combination with licensed physician(s) or licensed osteopathic physician(s), except radiologists, pathologists, and anesthesiologists, under Tenn. Code Ann. § 48-101-601(d)(4),and/or in combination with physician entities as described in Tenn. Comp. R. & Regs. 0880-2-.20(1)(b). Further, it is lawful for a physician assistant to be a member of, or holder of financial rights in, an MPLLC, but only in combination with licensed physician(s) or licensed osteopathic physician(s), except radiologists, pathologists and anesthesiologists, under Tenn. Code Ann. § 48-249-1109(e)(1)(D), and/or in combination with physician entities as described in Tenn. Comp. R. & Regs. 0880-2-.20(2)(b). Otherwise, insofar as our research has revealed no specific statutory prohibition against it, we anticipate that there could be certain circumstances in which a nurse practitioner, advanced practice nurse or physician assistant legitimately might own and operate a practice in which medical services are provided, so long as such services are provided under the "supervision, control and responsibility" of a licensed physician, as is required by Tenn. Code Ann. § 63-6-204(b). However, a licensed practical nurse or registered nurse (who is not, in addition, a certified nurse practitioner or advanced practice nurse) may not own and operate such a practice.

2. Our analysis of the second question necessarily derives from our analysis of the first question. As we have shown, it is not lawful for a licensed physician to be employed by a non-

[8]Each such section also imposes additional limitations on ownership or eligibility.

physician, unless such employment falls within a specific statutory exception to the "corporate practice of medicine" doctrine. Further, a certified nurse practitioner, registered nurse, advanced practice nurse, licensed practical nurse or physician assistant may provide medical services only under the "supervision, control and responsibility" of a licensed physician. Tenn. Code Ann. § 63-6-204(b).[9] Thus, we think that it would be antithetical, both to the above legal doctrine as well as to the above statutory requirement, for a physician to be employed by any of the above licensed allied health care providers, in order for the physician to supervise the provision of medical services by such non-physician at his or her remote practice site. This is because generally, an employer-employee relationship requires that the employer exercise supervision and control over the employee, as well as over the details of how the employee performs his or her job. BLACK'S LAW DICTIONARY 544 (7th. ed. 1999) defines "employer" as a "person who controls and directs a worker under an express or implied contract of hire and who pays the worker's salary or wages," while an "employee" is a "person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance." *Id.* at 543. Therefore, the very nature of such employer-employee relationship, with the licensed allied health care provider as the employer and the licensed physician as the employee, would be contrary to the statutory physician supervision requirement contained in Tenn. Code Ann. § 63-6-204(b).[10]

On the other hand, the relationship between an independent contractor and a contracting person or entity is substantially different. BLACK'S LAW DICTIONARY 774 (7th ed. 1999) defines an independent contractor as "one who is hired to undertake a specific project but who is left free to do the assigned work and to choose the method for accomplishing it." Generally, licensed allied health care providers operate under written protocols, which are written guidelines for medical management that are developed jointly by a licensed physician and a licensed allied health care provider (when the latter's practice includes provision of medical services). *See, e.g.*, Tenn. Comp. R. & Regs. 0880-3-.01(32)(physician assistant); 0880-6-.01(3) (nurse practitioner/prescription writer).

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[9]Further, Tenn. Code Ann. § 63-7-103(b) clarifies that the definition of the "practice of professional nursing" in § 63-7-103(a) "does not include acts of medical diagnosis or the development of a medical plan of care and therapeutics for a patient, except to the extent such acts may be authorized by §§ 63-1-132, 63-7-123 and 63-7-207."

[10]Tenn. Code Ann. § 63-6-204(c) contains one of the statutory exceptions to the "corporate practice of medicine doctrine." It permits a person, corporation, organization or other entity to employ a physician to treat only the entity's full-time, part-time and contract employees; its retirees; and dependents of the entity's employees or retirees, provided that "the employment relationship between the physician and the person, corporation, organization or other entity is evidenced by a written contract, job description or documentation, containing language which does not restrict the physician from exercising independent medical judgment in diagnosing and treating patients." *Id.* However, that section does not appear to us to be especially germane to the question of whether a licensed allied health care provider may employ or independently contract with a licensed physician for the sole purpose of providing the required supervision, responsibility and control over the licensed allied health care provider's provision of medical services at his or her remote practice site. This is because the exception noted in Tenn. Code Ann. § 63-6-204(c) applies only to treatment of the person's or entity's employees, as is described above. However, we can envision that under Tenn. Code Ann. § 63-6-204(c), licensed allied health care provider(s) could hire licensed physicians to treat the licensed allied health care provider's own employees, as is set out in that section.

For example, as is noted previously, a "physician assistant" is an individual who renders services, whether diagnostic or therapeutic, that are "acts constituting the practice of medicine or osteopathic medicine" and, but for the provisions of Tenn. Code Ann. §§ 63-6-204 and 63-9-113, could only be performed by a licensed physician. Tenn. Code Ann. § 63-19-102(5). Under Tenn. Code Ann. § 63-19-106(a), a physician assistant is authorized to perform selected medical services only under the supervision of a licensed physician. Further, Tenn. Code Ann. § 63-19-106(a)(3) provides as follows:

> A physician assistant may perform only those tasks that are within the physician assistant's range of skills and competence, that are within the usual scope of practice of the supervising physician, and that are consistent with the health and well-being of the patients.

Moreover, the range of services that may be provided by a physician assistant must be set forth in a written protocol, which also shall contain a "discussion of the problems and conditions likely to be encountered by the physician assistant and the appropriate treatment for these problems and conditions." Tenn. Code Ann. § 63-19-106(a)(2). Such protocols must be developed jointly and approved, dated and signed by both the supervising physician and the physician assistant. These protocols must outline and cover the applicable standard of care, and be specific to the population seen; they shall be reviewed and updated bienially, and shall account for all protocol drugs by appropriate formulary. Tenn. Comp. R. & Regs. 0880-2-.18 (5). In addition, such protocols must be maintained at the practice site and be made available upon request by the Board of Medical Examiners, the Committee on Physician Assistants, or their authorized agents. Tenn. Code Ann. § 63-19-106(a)(2). While the supervising physician has "complete and absolute authority over any action of the physician assistant," and although such supervision requires active and continuous overview of the physician assistant's activities in order to ensure that the physician's directions and advice are implemented, it does not require the continuous or constant presence of the supervising physician. Tenn. Code Ann. § 63-19-106(a)(1), (b). However, the supervising physician, who must have experience and/or expertise in the same area of medicine as the physician assistant, must be available for consultation at all times, or shall make arrangements for a similarly qualified substitute physician to be available. Tenn. Comp. R. & Regs. 0880-2-.18(2), (3). Further, the supervising physician personally must review at least twenty percent (20%) of charts monitored or written by the physician assistant every thirty days; must visit any remote site at least once every thirty days; and, if a patient falls within certain categories, must make a personal review of the historical, physical and therapeutic data and shall so certify in the patient's chart within thirty days. Tenn. Comp. R. & Regs. 0880-2-.18 (7), (8), and (9).[11]

We think that operating under such a protocol is, in many ways, analogous to that of an independent contractor arrangement. Implicit in the idea of working under such a protocol is the notion that the licensed allied health care provider may be working at a practice site that is at a

[11]The clinical supervision requirements contained in the Board of Medical Examiners' "Rules and Regulations Governing the Utilization and Supervision of the Services of a Nurse Practitioner/Prescription Writer" are similar. Tenn. Comp. R. & Regs. 0880-6-.02.

different office or location than the physician's practice site. This may be true, not only for a physician assistant, but also for other licensed allied health care providers, such as a certified nurse practitioner or advanced practice nurse, when such provider is providing medical services. If a physician assistant, nurse practitioner or advanced practice nurse, when acting as a "physician extender" by providing medical services under a protocol, were unable to independently contract with appropriately qualified physician(s) for necessary supervision in order to provide such services at practice sites that are remote from the physicians' practice sites, then persons in rural or underserved areas might be less likely to access needed medical care promptly. In any event, we see no legal impediment to a physician being an independent contractor of a certified nurse practitioner, advanced practice nurse or physician assistant, for the sole purpose of providing the supervision, responsibility and control required by Tenn. Code Ann. § 63-6-204(b) and other applicable law, over such licensed allied health care provider's provision of medical services at his or her remote practice site.

It is true that if a licensed allied health care provider were to disagree with the strictures of a particular supervision arrangement, he or she could break off the independent contractor relationship with that supervising physician. The licensed allied health care provider then could "doctor shop" for another supervising physician whose protocol requirements and supervisory style might be more agreeable. Yet, the licensed allied health care provider still would be required to provide medical services only under the "supervision, control and responsibility" of a licensed physician. Tenn. Code Ann. § 63-6-204(b). In addition, supervising physicians themselves are subject to specific legal requirements. For example, Tenn. Code Ann. § 63-19-106(b) requires that there "shall, at all times, be a physician who is answerable for the actions of the physician assistant and who has the duty of assuring that there is proper supervision and control of the physician assistant and that the assistant's activities are otherwise appropriate," while a physician who does not normally provide patient care is not authorized to supervise or utilize the services of a physician assistant. Tenn. Code Ann. § 63-19-107(4). Further, the selected medical/surgical services that are outlined in the protocol and that are delegated to the physician assistant "must form a usual component of the supervising physician's scope of practice." Tenn. Comp. R. & Regs. 0880-3-.02(1).[12] The supervising physician also is responsible for ensuring compliance with the applicable standard of care under the protocol requirements. Tenn. Comp. R. & Regs. 0880-2-.18(6).

In turn, the Board of Medical Examiners' rules that govern the "Utilization and Supervision of the Services of a Nurse Practitioner/Prescription Writer" provide similar requirements. In those rules, the supervising physician must be a "licensed and actively practicing physician," Tenn. Comp. R. & Regs. 0880-6-.01(4), who "shall have experience and/or expertise in the same area of medicine as the certified nurse practitioner." Tenn. Comp. R. & Regs. 0880-6-.02(3). The supervising physician is responsible for ensuring compliance with the applicable standard of care under the nurse practitioner's protocol requirements. Tenn. Comp. R. & Regs. 0880-6-.02(6).

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[12]A physician who supervises either a physician assistant or a nurse practitioner/prescription writer must possess a current, unencumbered license to practice in the state of Tennessee. Tenn. Comp. R. & Regs. 0880-2-.18(1); 0880-6-.02(1).

Moreover, any physician who, pursuant to Tenn. Code Ann. § 63-6-204(b), is required to have control over and responsibility for medical services being provided by any licensed allied health care provider (regardless of where those services are being provided) must have an unencumbered license, just as is currently required for physicians who supervise physician assistants and certified nurse practitioner prescription writers. Tenn. Comp. R. & Regs. 0880-2-.14(12). Most important, any licensed physician who supervises the services of a nurse practitioner or a physician assistant, and who practices in a manner that is inconsistent with the Tennessee Medical Practice Act, is subject to disciplinary action. Tenn. Comp. R. & Regs. 0880-6-.03; 0880-2-.18(14).[13] We think that all of the foregoing would circumscribe any potential adverse effects resulting from a change in a supervisory relationship between a licensed physician and a licensed allied health care provider.

Therefore, it is the opinion of this office that it is not lawful for a physician to be an employee of a certified nurse practitioner, registered nurse, advance practice nurse, licensed practical nurse or physician assistant for the sole purpose of providing the supervision, responsibility and control required by Tenn. Code Ann. § 63-6-204(b) for the provision of medical services by such licensed allied health care provider. However, a physician in active clinical practice lawfully may enter into an independent contractor arrangement with a certified nurse practitioner, advanced practice nurse or physician assistant for the sole purpose of providing any supervision, responsibility and control required by Tenn. Code Ann. § 63-6-204(b), and other applicable statutes and rules, over the licensed allied health care provider's provision of medical services at a remote practice site. Nevertheless, we do not think that the law permits a licensed physician to contract independently with a licensed practical nurse or registered nurse (who is not, in addition, a certified nurse practitioner or advanced practice nurse) for such purpose, since we can find nothing in the law to suggest that a licensed practical nurse or registered nurse legitimately may provide medical services at a remote practice site, that is, at a location that is distant from the "supervision, control and responsibility" of a licensed physician that is required by Tenn. Code Ann. § 63-6-204(b).

[13]Tenn. Code Ann. § 63-19-109 provides that utilization of the services of a physician assistant by a licensed physician that is inconsistent with the provisions of the Physicians Assistant Act constitutes grounds for a finding of unprofessional conduct. The physician is subject to disciplinary action, either before the Board of Medical Examiners or the Board of Osteopathic Examination; the sanction may range from suspension of privileges to utilize a physician assistant, to suspension or revocation of a physician's license to practice medicine or osteopathic medicine in Tennessee.

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